

Ct. 36
Item No.01
07.07.2023
(Suvendu)

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

**CPAN 24 of 2023
In
WPA 1935 of 2022**

**Anjali Kumari
Vs.
Yamuna Kumar Chaubey, DIR(Tech) NHPC & Ors.**

Mr. Rachit Lakhmani

.....for the petitioner

Mr. Bikramaditya Ghosh

Ms. Srijoni Chongdar

...for the alleged contemnors

The alleged contemnor no. 5 is admittedly a party to the appraisal made of the petitioner's performance from December, 2021 - 31st March, 2022. The petitioner levelled allegations of sexual harassment against the alleged contemnor no. 5 under the provisions of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The defense taken on behalf of the alleged contemnors is that the appraisal given by the alleged contemnor no. 5 was reviewed by the alleged contemnor no. 3 with an improvement in the scores and gradation and changed from 37 to 52 out of 100 / "poor" to "good". The very fact of the

improvement would stand testimony to the subversion, prima facie, of the checks against sexual harassment under the 2013 Act.

A person against who a complaint of sexual harassment has been made cannot, under any circumstances, be a party to the performance appraisal of the complainant. The alleged contemnors also cannot treat the improvement of the scores/ grades given to the petitioner before the Court (complainant in the sexual harassment proceedings) as vindication of the lack of accountability and fair play in their conduct.

Admittedly, the appraisal was prepared while the writ petition filed by the petitioner was being heard by the Court. The result of the appraisal was completed and uploaded on the website of the company for being viewed by the petitioner before the Court delivered the judgment in the writ petition on 11th August, 2022. The appraisal was uploaded on 30th July, 2022.

The factual sequence leads to the presumption of foul play. The alleged contemnor no. 5 participating in the appraisal vitiates the process altogether. The review of the petitioner's scores by the alleged contemnor no. 3 cannot redeem the situation or correct the course.

It is inconceivable that the alleged perpetrator arrogated to himself the power to assess

the performance of the complainant at the work place and influence the petitioner's future prospects.

Rule 8(a) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 specifically empowers the Complaints Committee to recommend restraining the respondent from reporting on the work performance of or writing the confidential report of the aggrieved woman. The work has to be assigned to another person.

The 2013 Act strives to secure a safe environment to a woman in her workplace. The acts of the alleged contemnors have made a mockery of the object of the Act and the safeguards introduced therein.

Before going into the allegations and counter charges made by the parties, the alleged contemnors, particularly the alleged contemnor no. 5, must prove that there has been no contumacious violation of the judgment and order passed by this Court on 11th August, 2022 and must also show that the alleged contemnor no. 5 that the performance appraisal of the petitioner was unconnected to the charges levelled by the petitioner against the alleged contemnor no. 5.

The affidavit-in-opposition should be filed by 21st July, 2023; Reply within 28th July, 2023.

List this matter on 4th August, 2023.

Needless to say, until further orders are passed by this Court, no person in the concerned company will make the appraisal known to any other person of the company or circulate the appraisal within the company which may have a bearing on the fate of the contempt application.

(Moushumi Bhattacharya, J.)